

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5673

PETITION OF KAREN M. AND ROLAND W. SCHUMANN

(Hearing held November 14, 2001)

OPINION OF THE BOARD

(Effective date of Opinion, December 28, 2001)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-1.323(b)(2), 59-C-1.328 and 59-B-3.1. The petitioners propose to construct: (1) a one-story addition/shed that requires a nine (9) foot variance as it is within eleven (11) feet of the rear lot line and (2) a covered porch that requires a six (6) foot variance as it is within eleven (11) feet of the rear lot line.

The construction of the proposed structures also requires a variance as the structures exceed the 35% maximum lot coverage, in accordance with Section 59-C-1.328. The required rear lot line setback for the one-story addition is twenty-five (25) feet and the required rear lot line setback for the covered porch is seventeen (17) feet.

Gabriel Romero, the petitioners' architect, and Reginald Jetter of the Department of Permitting Services (DPS) attended that public hearing.

The subject property is Lot 45, Block 3, Chevy Chase Gardens Subdivision, located at 4705 DeRussey Parkway, Chevy Chase, Maryland, in the R-60 Zone (Tax Account No. 00473770).

Decision of the Board: Requested variances **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner testified that the structures exist and are not proposed as advertised. The petitioner testified that the drawings for the structures went through multiple reviews by DPS, were approved by DPS, and built with a valid building permit.
2. The petitioner testified that the approved drawings did not factor in the roofing and coverage calculations for the shed and the covered porch and that it was not until the structures were substantially completed that the roofing and coverage calculation errors were discovered. The petitioner testified that he received a phone call from Reginald Jetter informing him that the Department had made an error in the issuance of their building permit.
3. Mr. Jetter, stated for the record, that he apologized for the Department's mistakes and the erroneous issuance of the building permit. Mr. Jetter stated that the error was discovered when a site visit was made to the property.

4. Mr. Romero testified that the topography that borders the petitioners' lot at the eastern and northern boundaries is higher by approximately 3½ feet because the neighbors on those lots have built retaining walls to adjust the slope.
5. Mr. Romero testified that the existing retaining walls collect water that drains onto the petitioners' property. Mr. Romero testified that the petitioners' property slopes from south to north and that the neighboring properties have similar slopes, which deposit runoff water on the petitioners' property.
6. Mr. Romero testified that a storm water system has been installed to redirect the water drainage across and off of the petitioners' property. Mr. Romero testified that most of the neighbors were pleased with the design of the structures and that the structures provide a balance to the architectural design of the residence.
7. Mr. Schumann testified that the lots in the neighborhood have a gentle slope from the street and that over time the neighbors have leveled-off their yards and installed retaining walls. Mr. Schumann further testified that his lot is surrounded by properties that have retaining walls or have added dirt to build up the topography, and that his property is sited lower than the neighboring properties.
8. The record contains several letters of support and a letter of opposition from the neighboring and adjoining homeowners. See, Exhibit Nos. 10(a) through 10(e) and 13.

FINDINGS OF THE BOARD

Based upon the petitioners' binding testimony and the evidence of record, the Board finds that the variances must be denied. The requested variances do not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the petitioners' lot is not unique and that the property's shape and size are very similar to the adjoining and confronting properties as shown on Exhibit No. 11.

The Board finds that the slope that impacts the petitioners' property is not peculiar only to the petitioners' lot, but also impacts the neighboring lots. The drainage issue is consistent among all of the properties and appears to have been dealt with by the petitioners with the installation of the stormwater system. These factors do not give rise to the need for the variances.

The Board observes that while the petitioners relied on the DPS issuance of the building permit, the regulations require that an applicant must satisfy the

standards in Section 59-G-1.3 of the Montgomery County Zoning Ordinance to permit the grant of a variance. See, *Cromwell v. Ward*, 102 Md. 691 (1995).

Since the petition does not meet the requirements of Section 59-G-1.3(a), the Board finds that it does not need to consider the other requirements for granting a variance. Accordingly, the requested variances of: (1) nine (9) feet from the required twenty (20) foot rear lot line setback for the construction of a one-story addition/shed; (2) six (6) feet from the required seventeen (17) foot rear lot line setback for the construction of covered porch; and (3) to exceed the 35% maximum lot coverage with the existing structures are denied.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Angelo M. Caputo, seconded by Louise L. Mayer, with Donna L. Barron, Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 28th day of December, 2001.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.